

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

RICK GREER,

Plaintiff,

v.

PERFORMANT RECOVERY, INC.,

Defendant.

CASE NO. 3:15-cv-05000-RJB

ORDER DENYING PLAINTIFF'S
MOTION FOR REMAND

This matter comes before the Court on plaintiff's Notice of Motion and Motion for Remand. Dkt. 6.

This case was never filed in state court. Plaintiff's complaint alleges claims for the Telephone Consumer Protection Act (47 U.S.C. § 227, et seq.); Fair Debt Collection Practices Act (15 U.S.C. § 1692, et seq.); Washington Collection Agencies Act (RCW 19.16, et seq.); and Washington Consumer Protection Act (RCW 19.86, et seq.). Dkt. 1-1.

On August 25, 2014, plaintiff emailed a copy of the complaint, dated August 25, 2014, to defendant's in-house counsel. Dkt. 6. On December 15, 2014, plaintiff served defendant's registered agent with a summons and complaint, dated December 4, 2014. Dkt. 7-3.

On January 2, 2015, defendant filed a Notice of Removal to federal court based on federal-question and supplemental jurisdiction. Dkt. 1.

On January 23, 2015, plaintiff filed a motion to remand this case to the state court for failure to timely file the notice of removal under 28 U.S.C. § 1446. Dkt. 6. Plaintiff argues that

1 defendant had 30 days after the receipt of the complaint to file a notice of removal; that plaintiff
2 delivered a copy of the complaint to defendant on August 25, 2014; and that, filed on January 2,
3 2015, more than 30 days after the initial receipt of the complaint, defendant's notice of removal
4 is untimely. Dkt. 6.

5 In response, relying on *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344
6 (1999), defendant argues that "informal transmission of a complaint without proper service of
7 process does not trigger the 30-day period for removal." Dkt. 8. Defendant argues that it
8 removed this case timely because the 30-day removal period commenced on December 15, 2014,
9 when plaintiff served defendant with the summons and complaint. *Id.* In addition, defendant
10 argues that the Court should deny plaintiff's motion because "informal notice was not received
11 by an agent authorized to receive process." *Id.* The Court need not reach the latter issue because
12 the Court should conclude that plaintiff's notice of removal was timely.

13 28 U.S.C. § 1446(b)(1), which governs this case, specifies, in relevant part, that a notice
14 of removal "shall be filed within 30 days after the receipt by the defendant, through service or
15 otherwise, of a copy of the [complaint]." The issue is whether the 30-day removal period
16 commenced not when plaintiff emailed defendant a copy of plaintiff's unfiled complaint on
17 August 25, 2014, but at the time of service of official process on December 15, 2014.

18 The Supreme Court has held that "a named defendant's time to remove is triggered by
19 simultaneous service of the summons and complaint, or receipt of the complaint, 'through
20 service or otherwise,' after and apart from service of the summons, but not by mere receipt of the
21 complaint unattended by any formal service." *Murphy Bros.*, 526 U.S. at 347-48. There, the
22 district court denied the remand motion on the basis that the 30-day removal period commenced
23 when the defendant was officially served with a summons, not when plaintiff faxed a copy of the
24 complaint to defendant. *Id.* at 349.

1 The Supreme Court agreed with the district court, reversing the Eleventh Circuit's
2 decision that "the clock starts to tick upon the defendant's receipt of a copy of the filed initial
3 pleading." *Id.* The Supreme Court explained that "one becomes a party officially, and is required
4 to take action in that capacity, only upon service of a summons or other authority-asserting
5 measure stating the time within which the party served must appear and defend." *Id.* at 350. *See*
6 Fed. R. Civ. P. 4(a) ("[the summons] must ... state the time within which the defendant must
7 appear and defend, and notify the defendant that a failure to do so will result in a judgment by
8 default against the defendant."); Fed. R. Civ. P. 12(a)(1)(A) ("[a] defendant must serve an
9 answer...within 21 days after being served with the summons and complaint"). Finally, nothing
10 in 28 U.S.C § 1446's legislative history suggests that Congress intended to dispense with the
11 historic function of service of process as the official trigger for responsive action by an
12 individual or entity defendant. *Murphy Bros.*, 526 U.S. at 352-53.

13 Here, plaintiff served defendant with the summons and complaint on December 15, 2014.
14 Accordingly, filed on January 2, 2015, defendant's notice of removal is timely. Defendant
15 became a party officially and was required to take action in that capacity when defendant was
16 served with the summons and complaint, not when defendant received a copy of plaintiff's
17 unfiled complaint via email. Moreover, unlike in *Murphy Bros.*, plaintiff's complaint was not
18 even filed in state court. Nor has plaintiff shown that defendant has waived service. Accordingly,
19 the Court should conclude that the 30-day removal period commenced when plaintiff served
20 defendant with the summons and complaint, not when plaintiff emailed defendant a copy of his
21 unfiled complaint.

22 Although plaintiff argues that *Murphy Bros.* is distinguishable because *Murphy Bros.*
23 dealt with an Alabama's, not Washington's, service of process statute, Congress amended 28
24 U.S.C. § 1446(b) to reduce the disparity in the periods for removal between States and to give

1 defendants adequate time therefor. *Id.* at 351. Moreover, depending on when a complaint is
2 received, a defendant's period for removal may be more than 30 days from service. *Id.* at 354. In
3 addition, plaintiff argues that the 30-day removal period commenced on August 25, 2014, under
4 Washington law because RCW 4.28.080 requires “delivering a copy thereof” to serve, as here, a
5 foreign corporation. Dkt. 10, at 2 (emphasis removed). However, this statute has no bearing on
6 this case because it applies to a summons, not a complaint. RCW 4.28.080 (“[t]he summons shall
7 be served by delivering a copy thereof, as follows:...”). What plaintiff “delivered” to defendant
8 in this case was a complaint, not a summons. Accordingly, plaintiff’s motion is without merit.

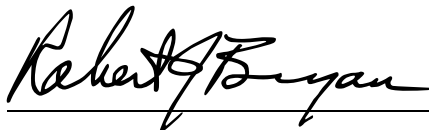
9 Finally, plaintiff argues that plaintiff has pleaded state claims and that the Court “should
10 not take supplemental jurisdiction over this case simply because there are federal claims in the
11 complaint.” Dkt. 6, at 4. The Court should conclude that supplemental jurisdiction is proper in
12 this case because plaintiff’s state-law claims appear to be so related to plaintiff’s federal claims
13 (Dkt. 1) that they form part of the same case or controversy. See 28 U.S.C. § 1367.

14 Accordingly, it is hereby **ORDERED** that

15 Plaintiff’s Motion Notice of Motion and Motion for Remand (Dkt. 6) is **DENIED**.

16 The Clerk is directed to send uncertified copies of this Order to all counsel of record and
17 to any party appearing *pro se* at said party’s last known address.

18 Dated this 24th day of February, 2015.

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21 ROBERT J. BRYAN
22 United States District Judge
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